STATE OF NORTH CAROLINA
COUNTY OF DURHAM

Development Agreement
Between the City of Durham and
McCormack Baron Salazar, Inc.

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2012, by and between the City of Durham, North Carolina a public body organized and existing under and by virtue of the laws of the State of North Carolina ("City") and McCormack Baron Salazar, Inc., a Missouri corporation ("Developer" or "MBS").

BACKGROUND

The Department of Housing & Community Development of the City issued a Request for Qualifications for the Rolling Hills Redevelopment Area Project on December 19, 2005 (as supplemented and amended, the "RFQ"), which requested qualifications from interested developers regarding the development of an approximately 20 acre subdivision formerly known as Rolling Hills, and related areas (as more particularly defined below, the "Revitalization Site").

The Developer submitted a Statement of Qualifications dated February 3, 2006 (the "Proposal"), in response to the RFQ.

The City reviewed the Statements of Qualifications submitted in response to the RFQ and conducted interviews with two respondents. The City then advised the Developer that it had been selected for the exclusive limited right to negotiate definitive agreements with the City to carry out the "Development" (as more particularly defined below) within the Revitalization Site. This Agreement will set out the responsibilities of the City and the Developer for the Development.

On September 3, 2008, the City and the Developer entered into a Predevelopment Agreement in order to carry out specified "Predevelopment Activities," including the preparation of a "Master Plan," and on December 7, 2009 the City and the Developer entered into an amendment to the Predevelopment Agreement in order to modify certain terms.

On September 12, 2011 the City and McCormack Baron Salazar Development, Inc. ("MBSD"), an affiliate of the Developer, entered into a CDBG Agreement (the "2011 CDBG Agreement") pursuant to which MBSD has carried out certain activities relating to the Revitalization Site on behalf of the City. The City and MBSD are presently developing the terms of a further CDBG Agreement pursuant to which MBSD would implement certain Site Preparation Work and Public Infrastructure activities relating to the Revitalization Site as a contractor for of the City as further described below (the "2012 CDBG Agreement," and together with the 2011 CDBG Agreement, as each may

be further amended or supplemented, the "CDBG Agreement").

On September 12, 2011 the City and Southside Revitalization Phase I LP (the "Rental Phase 1 Owner Partnership") entered into a Predevelopment Loan Agreement (the "Rental Phase 1 Predevelopment Loan Agreement") pursuant to which the City agreed to provide funding for, and the Rental Phase 1 Owner Partnership agreed to carry out, certain predevelopment activities in support of "Rental Phase I" (as defined below).

The City and the Developer desire to enter into this Agreement in order to set forth specific rights and responsibilities of the City and the Developer in connection with the further planning and carrying out of the Development pursuant to the "Revitalization Plan" (as defined below).

The City Council has granted to the Developer an option to purchase the land upon which Rental Phase 1 will be constructed for the sum of One Dollar ($1.00). Additional consideration received by the City shall be the net present value (NPV) of the affordable rents over the 30-year period of affordability.

To induce the City to commit funds to the Development, to establish the mutual agreements and obligations of the parties, and in consideration of the recitals, covenants and promises set forth herein, the Developer and the City agree as follows:

ARTICLE I
Definitions

For purposes of this Agreement, each of the following capitalized terms shall be defined as follows:

Agreement: This Agreement (including all Exhibits attached to and made a part of it), as it may from time to time be amended.

City: The City of Durham, North Carolina.

City Funds: Collectively, City Loan Funds and City Site Funds.

City Loan Funds: All funds provided, or required pursuant to this Agreement to be provided, as a City Loan.

City Loans: The loans to be made by the City to Owner Partnerships at the Closing of each Phase in accordance with the terms of this Agreement.

City Loan Documents: The documents evidencing and securing each City Loan, as more particularly defined in Section 7.5(a).

City Site Funds: All funds provided, or required pursuant to this Agreement to be provided, by the City pursuant to the CDBG Agreement or as otherwise may be needed to meet the City's obligations relating to Site Preparation Work and Public Improvements.

Clean and Rough Graded: Means (i) the demolition of all designated structures and infrastructure shall have been completed in accordance with all applicable laws, including Environmental Laws, including, but not limited to, those governing the removal of asbestos-containing materials and/or lead based paint; (ii) the removal and disposal of all debris from the demolition and all other surface and subsurface physical obstructions shall have been completed in accordance with all applicable laws, including Environmental Laws; (iii) all areas unsuitable to construction of the New Improvements (such as but not limited to old foundations, retaining walls, areas of uncompacted fill, or on-site underground utilities which may be encountered), shall have been removed or closed, and all such areas shall have been compacted with suitable fill material, and (iv) all areas shall have been rough graded to within 6 inches of final grade established in the Revitalization Plan or Developer's Plans and Specifications (or to other grading specification agreed upon in writing by the City and Developer) to permit the construction thereon of the New Improvements.

Closing: With regard to any loan, grant or transfer of real property, the date on which principal commitments (including financing, land conveyances, covenants, agreements and contracts) are performed or converted to binding obligations of performance.

Developer: McCormack Baron Salazar, Inc.

Development: The development of housing and complementary live/work or retail/commercial facilities on the Revitalization Site.

Development Budget: Defined in Section 3.2(a).

Development Site: A parcel or portion of the Revitalization Site designated for construction of a Phase.

Environment: Surface or subsurface soil or strata, surface waters and sediments, navigable waters, wetlands, groundwater, sediments, drinking water supply, ambient air, species, plants and natural resources. The term also includes indoor air, surfaces and building materials, to the extent regulated under Environmental Laws.

Environmental Condition: The presence of Hazardous Materials in the Environment at, on, in, under or about a Development Site.

Environmental Law: Any and all present or future federal, state or local laws,

ordinances rules, regulations, permits, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing Hazardous Materials, the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. ("TSCA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called "Superfund" or "Superlien" law, and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. ("OSHA"), and the North Carolina Solid Waste Management Law, as each is from time to time amended and hereafter in effect.

Exhibits: The following Exhibits which are attached to this Agreement, incorporated herein by reference:

(a) Exhibit A – Revitalization Site Map
(b) Exhibit B – Master Schedule
(c) Exhibit C – Development Budget

Hazardous Materials: Any solid, liquid, or gaseous material, chemical, waste or substance that is regulated by a federal, state or local governmental authority and includes those substances listed or defined as "hazardous substance" under CERCLA and the North Carolina Solid Waste Management Law, "hazardous waste" under RCRA and the North Carolina Solid Waste Management Law, or otherwise classified as hazardous, dangerous or toxic under an Environmental Law and specifically includes petroleum, oil and petroleum hydrocarbons, radon, radioactive materials, asbestos, lead-based paint, urea formaldehyde foam insulation and polychlorinated biphenyls.

Investor: Investor limited partner(s) in an Owner Limited Partnership (or non-managing member if the Owner Partnership is a limited liability company) as shall be selected by Developer.

Master Schedule: Defined in Section 3.1.

NCHFA: The North Carolina Housing Finance Agency.

New Improvements: Buildings and improvements (including building fixtures) to be constructed by an Owner Entity on a Development Site, including ancillary buildings and site improvements; provided, however, that New Improvements expressly does not include Public Improvements

Owner Partnership: Defined in Section 7.2.

Phase Development Budget: Defined in Section 3.2(b).

Public Improvements: Defined in Section 5.2.

Rental Phase: A Phase consisting of rental housing. The current and anticipated Rental Phases are further described and defined in Section 2.1.

Revitalization: The program of carrying out all revitalization activities, including but not limited to physical redevelopment activities, to be carried out under and in accordance with the Revitalization Plan.

Revitalization Plan: Shall mean the Revitalization Plan dated July 6, 2010.

Revitalization Site: The approximately 20-acre subdivision formerly known as Rolling Hills as described in Exhibit A.

Site Preparation Work: Defined in Section 5.1.

State: The State of North Carolina.

ARTICLE II

Revitalization Plan; Relationship of Parties.

2.1 Phases:

(a) The Revitalization Plan contemplates development of approximately 300 total units of housing on the Development Site, to be carried out in several Phases. The Phases are presently in different states of readiness and with different levels of commitment as between the City and the Developer, as further described below.

(b) The Developer applied to NCHFA and received an award of 2011 low-income housing tax credits for “Rental Phase 1,” presently anticipated to consist of 119 rental units along with 13 units of complementary live/work or retail/commercial space, for a total of 132 units to be constructed on approximately 7 acres of the Revitalization Site.

The City and the Developer anticipate that Closing of Rental Phase 1 will occur not later than the third quarter of calendar year 2012.

(c) It is anticipated that a "Rental Phase 2" project shall be developed on the Revitalization Site, presently anticipated to consist of approximately 79 rental units of housing. The City and Developer have agreed to undertake or participate in development of Rental Phase 2, subject to the terms of this Agreement in general and more particularly contingent upon the receipt of a Low Income Housing Tax Credit (LIHTC) award from NCHFA, availability of City Funds for such Phase and authorization of such expenditures by the City Council. The Developer anticipates applying to NCHFA for an allocation of low-income housing tax credits for Rental Phase 2 no later than June 30, 2014. The City anticipates committing approximately $3,400,000 in City Loan Funds for Rental Phase 2 and approximately $1,000,000 in City Site Funds relating to Rental Phase 2 Public Improvements, with final amounts subject to City Council approval. The City and the Developer anticipate that Closing with respect to Rental Phase 2 will occur not later than the second quarter of the calendar year following the year in which NCHFA awards low-income housing tax credits for Rental Phase 2.

(d) Should additional mixed-income rental development on the Revitalization Site be warranted and decided upon by the City Council, then the City and Developer shall enter in good faith negotiations to come to terms on subsequent agreements to undertake or participate in such development as a third Phase. Developer shall assist the City with selection of a development partner for any portions of the Revitalization Site not developed by Developer, for example, a home ownership development project. The City will make the final determination of any development partner selected. The Developer will not be obligated to take any actions or expend any funds in support of a third Phase until such time, as any, as it becomes an Approved Phase, and may terminate this Agreement if a third Approved Phase is not established on or before January 1, 2016.

(e) For purposes of this Agreement, Rental Phase 1 is presently an "Approved Phase;" Rental Phase 2 will be an "Approved Phase" at such time as the City approves submission of an application to NCHFA for tax credits and issues (with City Council approval) a preliminary, conditional commitment of associated City Funds, and an additional Phase (if any) will become an "Approved Phase" when City Council approves a submission of an application to NCHFA for tax credits (if applicable) and when City Council authorizes a preliminary, conditional commitment of associated City Funds. Any Phase that is not an Approved Phase shall be referred to as a "Potential Phase." The terms of this Agreement will apply to, and the terms of the Rental Phase 1 City Loan Documents will be substantially the form for subsequent Approved Phase unless the parties expressly agree to different terms in writing. In connection with Developer's application to NCHFA for financing of Rental Phase 2 or another Approved Phase, provided that this Agreement has not been terminated, the City agrees to enter into an option contract with the Developer or its designee in substantially the form of the

contract executed in connection with the Rental Phase 1 application. At such time as NCHFA awards tax credits for an Approved Phase the City will provide predevelopment financing for such Approved Phase on substantially the same terms as reflected in the Rental Phase I Predevelopment Loan Agreement.

2.2 Developer Responsibilities: The Developer, directly or through one or more affiliates and/or Owner Partnerships, shall initiate, coordinate, and carry out or contract for all design, financing, and construction activities in connection with the development, construction and completion of all New Improvements for each Approved Phase as further provided in and subject to the terms of this Agreement (and subject more particularly to delivery by the City to the Developer or appropriate Owner Partnership of a Development Site in Clean and Rough-Graded condition and approval and availability of City Funds for the subject Phase). The services and activities to be performed by Developer in its capacity as developer of a Rental Phase (the "Developer Services") include the following (in each case subject to the recognition that (i) Developer Services described in this Agreement as belonging to the Developer may be performed or caused to be performed by the Developer, an Owner Partnership and/or an affiliate of the Developer, and (ii) services performed pursuant to a CDBG Agreement do not constitute Developer Services):

(a) Developer shall be responsible for obtaining commitments for all sources of construction, gap and permanent financing needed for each Approved Phase, in accordance with the Phase Development Budget, other than City Funds. Each Phase Development Budget established at closing of a Phase shall be subject to the review and approval of the City;

(b) Developer shall be responsible for applying for, obtaining and preserving through Closing allocations of Federal low-income housing tax credits, and for the tax and financial structuring of syndications thereof;

(d) Developer shall be responsible for the design, engineering and implementation of all New Improvements with respect to each Approved Phase.

(e) Developer shall be responsible for coordinating, directing and managing the progress of the Development in accordance with this Agreement.

(f) Developer shall enter into a Small Disadvantaged Business Enterprise agreement and a Workforce Development Plan, both as approved by the City prior to or concurrently with the execution of this Agreement; and

(g) At the Closing of each Rental Phase Developer will execute a guaranty of construction completion for the benefit of the City and will execute such further guarantees as may reasonably be required by the Investor and third-party lenders including, as applicable, construction completion, development deficit

guarantees, operating deficit guarantees, tax credit recapture guaranties and environmental indemnities. Developer reserves the right to negotiate the terms of such guarantees with the Investor and such third-party lenders on a commercially reasonable basis.

2.3 City Responsibilities:

(a) The City will make City Funds available to Developer in the amounts identified in the Phase Development Budget for each Approved Phase. The City will make these funds available on a timely basis in accordance with its obligations under this Agreement and the CDBG Agreement, as applicable. The total amount of City Funds reflected in the initial Development Budget for Rental Phase 1 is up to $5,486,000 in City Loan Funds and up to $5,000,000.00 in City Site Funds. Each City Loan will be made to an Owner Partnership at Closing in the amount of up to the amount identified in the Phase Development Budget for an Approved Phase as further described in Section 7.5.

(b) The City shall give the Developer its full institutional support so long as all of Developer's obligations hereunder are timely performed in accordance with the terms hereof. Notwithstanding any silence of this Agreement as to specific obligations, the City and the Developer will take all reasonable actions as are within their respective authority and necessary to the accomplishment of the Revitalization Plan. Where any resources anticipated by the parties become unavailable in whole or in part, or for any reason the Revitalization Plan must deviate from the initial Revitalization Plan in order to be feasible, or if future amendments to the Revitalization Plan are required by unforeseen circumstances, the City and Developer will work in good faith to agree upon changes or alternate plans which accomplish the original goals set forth in the Revitalization Plan to the maximum extent reasonably possible given available resources.

(c) The City shall deliver the Development Site for an Approved Phase to the Developer (or an appropriate Owner Partnership) in Clean and Rough-Graded condition within the timeframes anticipated by the Master Schedule or any Phase-specific schedule established by the parties. The City shall be responsible for the design, engineering and construction of all Site Preparation Work and of all Public Improvements required to serve an Approved Phase, as further specified in Article V. Once Closing has occurred on a Development Site or transfer of title has occurred, whichever may come first, responsibility for that Development Site is transferred to the Developer, and the City shall have no responsibility for any conditions on the Development Site – except as may otherwise arise from the application of the last sentence of Section 5.3(b).

ARTICLE III
Administration of Revitalization

3.1 Master Schedule: Attached hereto as Exhibit B is a schedule for commencement and completion of significant tasks contemplated to achieve completion of Rental Phase 1 (the "Master Schedule"). The Developer shall supplement the bar-graph schedule with detailed schedules for submissions and responses thereto of necessary deliverables associated with tasks covered by the schedule. The Developer shall continually revise and update the Master Schedule to reflect evolving events and circumstances, including impacts on interdependently related activities, and to include actual dates of commencement and completion of tasks. An updated complete Master Schedule will be provided to the City monthly, with identification and explanation of changes reflected therein. If the City shall object to any change in the schedule as submitted by the Developer, the City shall promptly advise the Developer in writing of the City's basis for such objection and any suggested means of avoiding or otherwise remedying such change. The developer will provide a schedule for Rental Phase 2 within 90 days after the preliminary application for low-income housing tax credits is submitted to NCHFA, and more generally shall supplement and update the Master Schedule relative to any additional Approved Phase.

3.2 Budget:

(a) Attached hereto as Exhibit C is the initial budget for the Revitalization Plan relative only to Rental Phase 1 and currently approved City Site Funds (the "Development Budget"). The initial Development Budget does not include Potential Phases. Proposed revisions to a Development Budget will be submitted by the Developer to the City when deemed necessary by the Developer, or when requested by the City, in the form of a proposed revised Development Budget with identification and explanation of changes. Upon written approval by the City, the proposed revision shall be deemed to constitute a revised Development Budget and an amendment to this Agreement. The City shall not unreasonably withhold approval of any proposed increase in a Development Budget for which a source of funds other than City Funds is obtained by the Developer. Funds may be shifted between line items of the Development Budget with prior written approval of the Director of the Department of Community Development (DDCD) provided these adjustments do not extend the term for any performance required under this Agreement, do not result in a change to the Revitalization Plan, or increase the total funding for Development Budget activities, and so long as no adjustment exceeds ten percent (10%) of the total Development Budget.

(b) When Developer submits a proposed Development Budget for any Phase (each a "Phase Development Budget") subsequent to Rental Phase 1, Developer will also submit a proposed Development Budget for all Phases in the Revitalization Plan (including Phases completed or under construction, Approved Phases and

Potential Phases), which may be in summary form but shall specify the anticipated total amounts required of City Funds, private funds, and other public funds. In the interest of ensuring that Phases are structured in such a way that the City will be able and willing to provide financial support for the Potential Phases' development, the Phase Development Budget may not be exceeded without the prior approval of the City, which will not be unreasonably withheld. After initial submission, proposed revisions to a Phase Development Budget will be submitted by the Developer to the City quarterly in the form of a proposed revised Phase Development Budget with identification and explanation of changes, which upon written approval by the City shall be deemed to constitute a revised Phase Development Budget. Notwithstanding the foregoing, Phase Development Budgets for Potential Phases shall not be binding on the City -- but Phase Development Budgets for Approved Phases will be binding upon approval by the City Council. The City shall not unreasonably withhold approval of any proposed increase in a Phase Development Budget for which a source of funds other than from the City is identified by the Developer.

3.3 Status Reports and Information: No later than the 15th day of the month, beginning with the month following the month this Agreement is executed, (i) the Developer shall provide the City with a written progress report in such form as may reasonably be required by the City on the status of all revitalization activities, including work performed by the Developer's subcontractors and by the City as reported by it to the Developer, and which shall include proposed modifications to the Master Schedule, when necessary; a chart showing expenses against the Phase Development Budget; and when necessary, proposed revisions to the Development Budget; and (ii) the City shall provide the Developer with written progress reports on the status of all activities that are the responsibility of the City, including work performed by the City's contractors, which shall include, when necessary, proposed modifications to the Master Schedule. Developer shall attend progress meetings with City monthly, or more often if either party deems necessary, respecting such matters as the progress of the work done under this Agreement, the amount of costs incurred, the estimated cost of completing the Predevelopment Phase, matters respecting Project carryover for purposes of the federal and state low income housing tax credits anticipated to be reserved for the Development, an analysis of any changes that in either party's opinion should be made in the Development Budget, Master Schedule or the Development itself. These meetings and status reports shall continue until the parties agree they are no longer needed.

Article IV
Environmental and Geotechnical Conditions

4.1 The Developer or its affiliate has caused a Phase I Environmental Site Assessment, Phase II Environmental Site Assessment and certain addenda and further testing (collectively, a "Site ESA") to be performed with respect to the entire Revitalization Site pursuant to the 2011 CDBG Agreement and the Rental Phase 1

Predevelopment Loan Agreement. (The results of these assessments are expected to be addressed in the 2012 CDBG Agreement scope of work, as further described in Section 5.3.) Going forward, if deemed warranted by the Developer or the City with respect to an additional existing or suspected Environmental Condition identified in existing Site ESA's or further assessments or addenda thereto, the City will cause to be performed further testing or other evaluation reasonably necessary to determine the existence, scope and extent of an Environmental Condition. If such testing or evaluation identifies the presence of an Environmental Condition (or, as applicable, a new or previously unidentified Environmental Condition), the Developer and City shall meet to determine the scope of remediation to be performed at the affected Development Site consistent with Protective Concentration Levels (PCLs) or remedy standards applicable to the intended use of the property. If the Developer and City are able to reach agreement on the scope of additional remediation, a written agreement shall be entered into between the parties, which agreement may be in the form of an amendment to this Agreement or to the CDBG Agreement. Developer shall exercise the reasonable care and standards of a professional real estate development company in connection with its activities under this Agreement and the CDBG Agreement; however, Developer shall bear no responsibility or liability for environmental plans and specifications as a result of its engagement of consultants and contractors on behalf of the City pursuant to this Agreement or the CDBG Agreement. The City and the Developer acknowledge that all third-party funding sources, as a condition to their funding of any Phase of the Revitalization, will likely require all data available in regard to the foregoing environmental matters, and will likely require evidence that any Environmental Conditions have been remediated to meet applicable Environmental Laws, which may include a requirement to obtain a Certificate of Completion or a "no further action" clearance letter with respect thereto from the North Carolina Department of Environmental Resources ("NC DENR").

4.2 If the Developer and City are unable to reach agreement on the scope of remediation to address an Environmental Condition identified by a Site ESA, or if the City determines at any time subsequent to the completion of any Site ESA, but prior to Closing with respect to the Phase encompassing the affected Development Site or portion thereof, that the nature of, time frames for, or costs of remediation required of an environmental condition affecting a Development Site or any portion thereof identified in a Site ESA or discovered during the course of Site Preparation Work would render the construction of the New Improvements on such site practically or financially unacceptable, the Developer and City shall meet to consider the feasibility of the development of the affected Phase or affected portions thereof and possible methods and source of payment for remediation of such environmental condition. The Master Schedule may be extended by the time needed to remediate such environmental condition, if feasible in the light of controlling deadlines imposed by financing or supervisory agencies. If the City, after conferring with the Developer, determines that remediation of such environmental condition in accordance with a scope of remediation acceptable to the Developer and third-party funding sources cannot feasibly and cost-

effectively be effected, the affected site or portion thereof shall be removed from the affected Phase and if reasonably available a suitable alternative site acceptable to the Developer in Clean and Rough-Graded condition shall be substituted therefore (if allowed by NCHFA), in order to permit development and construction of a Phase having, to the extent reasonably possible, the full number of units and unit mix planned. If substitution of a suitable alternative site is not feasible in light of controlling deadlines, the City's resources, or other requirements imposed by financing or supervisory agencies, the parties will use good faith efforts to include development of the affected number of units in a later Phase of the Development, if applicable and feasible. If substitution of a suitable alternative site is not feasible in light of controlling deadlines imposed by financing or supervisory agencies, including applicable placement-in-service deadlines, the Developer shall also be entitled to those remedies detailed in Section 8.4(a) with respect to the excluded site or portion thereof. For purposes of this provision, "feasible" shall include cost-effective in light of City resources.

4.3 Developer Environmental Covenant: Developer shall not itself, and Developer and each Owner Partnership shall not permit any other person, including, but not limited to, third parties with whom Developer or an Owner Partnership contracts in regard to this Agreement, to bring onto any Development Site any Hazardous Materials, except to the extent reasonably necessary to perform development and construction activities and used in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, the following Hazardous Materials are prohibited from being brought onto the Development Site: (i) asbestos or asbestos containing material, (ii) polychlorinated biphenyl material, (iii) Hazardous Materials that require remediation under applicable law, or (iv) soil containing volatile organic compounds regulated under applicable law. Additionally, in the event that Developer encounters on such Development Site (i) asbestos or asbestos containing material, (ii) polychlorinated biphenyl material, (iii) soil containing volatile organic compounds, or (iv) any other subsurface, adverse condition, Developer shall promptly notify the City in writing. The Developer or Owner Partnership(s) may elect to secure environmental insurance for one or more Development Sites, the costs of which may be included in the Development Budget.

4.4 Geotechnical Assessment and Remediation:

(a) The Developer shall engage geotechnical consultants to perform geotechnical evaluation of all sites identified as Development Sites and will provide copies of each of such report to the City. Preliminary geotechnical assessments are being funded pursuant to the 2011 CDBG Agreement; subsequent activities will be the responsibility of the City, and may be funded and carried out, as applicable, pursuant to CDBG Agreements. Except only as may be expressly provided in this Agreement or any amendment hereto or in any separate agreement between the parties hereto, remedial actions recommended in geotechnical assessment reports shall be included in Site

Preparation Work as part of the delivery of each Development Site in Clean and Rough-Graded condition. The Developer shall submit or cause to be submitted to the City for its review all proposed plans and specifications for such remediation and shall cause the appropriate contractors or consultants to meet with the City for the purpose of reviewing such submissions and discussing any City questions or concerns. Developer shall exercise the reasonable care and standards of a professional real estate development company in connection with its activities under this Agreement and the CDBG Agreement; however, Developer shall bear no responsibility or liability for plans and specifications for site preparation activities as a result of its engagement of consultants and contractors on behalf of the City pursuant to this Agreement or the CDBG Agreement. If the Developer determines at any time prior to Closing that the nature of, time frames for, or cost of remediation of a geotechnical condition recommended in a geotechnical evaluation report, or remediation of a geotechnical condition which is discovered during the course of Site Preparation Work (or a materially increased scope or cost of remediation of a previously discovered condition which is discovered during the course of such Site Preparation Work) would render construction or operation of the New Improvements on the affected Development Site or portion thereof practically or financially unacceptable, the Developer and the City shall meet to consider the feasibility of the development of the Development Site or affected portions thereof and the possible methods and source of payment for remediation of such geotechnical condition. The Master Schedule may be extended by the time needed to remediate such geotechnical condition, if feasible in the light of controlling deadlines imposed by financing or supervisory agencies. If the Developer, after conferring with the City, determines that the geotechnical condition cannot feasibly be cured, the affected site or portion thereof shall be removed from any affected Phase and if reasonably available a suitable alternative site acceptable to the Developer in Clean and Rough-Graded condition shall be substituted therefore, in order to permit development and construction of a Phase having, to the extent reasonably possible, the full number of units and unit mix planned. If substitution of a suitable alternative site is not feasible in light of controlling deadlines or other requirements imposed by financing or supervisory agencies, the parties will use good faith efforts to include development of the affected number of units in a later Phase of the Development, if applicable and feasible. If substitution of a suitable alternative site is not feasible in light of controlling deadlines imposed by financing or supervisory agencies, including applicable placement-in-service deadlines, the Developer shall also be entitled to those remedies detailed in Article X with respect to the excluded site or portion thereof.

(b) Prior to Closing with respect to a Phase and during the course of any continuing Site Preparation Work, if the City determines that the nature of, time frames for, or cost of remediation of a geotechnical condition which is discovered during the course of such Site Preparation Work or construction work (or a materially increased scope or cost of remediation of a previously discovered geotechnical condition) would render the construction of the New Improvements or operation of such New Improvements on such Development Site or portion thereof practically or financially

unacceptable, the Developer and City shall consider the feasibility of the development of the Development Site (or affected portions thereof) and possible methods and source of payment for remediation of such geotechnical condition. The Master Schedule may be extended by the time needed to remediate such geotechnical condition, if feasible in the light of controlling deadlines imposed by financing or supervisory agencies.

ARTICLE V
Site Preparation Work and Public Improvements

5.1 Site Preparation Work: The City is responsible for the design, engineering, funding and implementation of: (a) all activities relating to delivery of a Development Site in Clean and Rough-Graded Condition; (b) such environmental studies and activities which are the responsibility of the City under Article IV hereof, and (c) such geotechnical studies and activities which are the responsibility of the City under Article IV hereof (collectively, "Site Preparation Work").

5.2 Public Improvements: The City shall be responsible for the design, engineering and construction of all new public improvements required to serve the Rental Phase 1 development to include: water and sewer lines, gas and electric utilities, streets, street lighting, sidewalks, curbs, street trees and other elements within the public right of way, all as more particularly described in the design documents and bid packages relating to the CDBG Agreement (the "Public Improvements").

5.3 CDBG Agreement:

(a) The City intends to satisfy all of its obligations relating to Site Preparation Work and Public Improvements through the CDBG Agreement. Pursuant to the CDBG Agreement, the City is contracting with the Developer or its affiliate to carry out Site Preparation Work and Public Improvements activities using funds provided by the City. The Developer or its affiliate shall receive a 16% management fee for the oversight of the Site Preparation and Public Improvement activities pursuant to CDBG Agreements (which fee is expressly separate from Developer Fee). Payment schedule of the management fee will be specified in the CDBG Agreement. Qualifying and contracting for the Site Preparation Work and Public Improvements work pursuant to the CDBG Agreement shall be carried out in accordance with the laws, policies and procedures (including standard form documents, adapted to the circumstances and parties as needed) which the City would comply with if it conducted the contracting process through its own forces – all as further specified in the CDBG Agreement. The parties each expect that the 2012 CDBG Agreement will provide for a scope of work and funding amounts sufficient to meet the parties' expectations as of the date of such agreement for Site Preparation Work for the entire 20-acre Revitalization Site and for Public Improvement work relative to the approximately 7-acre Rental Phase 1 Development Site. However, the relevant scope and funding obligations remain subject to further adjustment under the terms of the CDBG Agreement (for example, in the

event of change order under the terms of that agreement) and in any event as may be further required for the City to meet its obligations under this Agreement (for example, if further Hazardous Materials are identified, or relative to further Approved Phases).

(b) To the extent any Site Preparation Work or Public Improvements work is the subject of a CDBG Agreement with Developer or with its affiliate, then so long as the City fulfills the terms of such CDBG Agreement the Developer shall not be excused from performance under the terms of this Agreement for any time delays in prosecution or completion of such work. At Closing of an Approved Phase the City may request, but is not required to, that Developer or the relevant Owner Partnership sign a statement that the Public Improvements have been completed to the extent necessary for completion of all of Developer's obligations which are contingent upon that Public Improvements, and Developer shall promptly comply with such request unless it has reasonable grounds to dispute content of the statement. If and to the extent that Site Preparation Work and/or Public Improvements for the Development Site of an Approved Phase or a portion thereof is not completed by the date of Closing with respect to such Phase, the Developer may in its sole and absolute discretion proceed with such Closing provided that, at a minimum, the City causes the continuation and completion of Site Preparation Work and/or Public Improvements subsequent to Closing. In such circumstances, the the Owner Partnership shall grant to the City (or to the Developer or its affiliate pursuant to the CDBG Agreement) such licenses or easements as are required in order to permit completion of the subject activities), and the obligations of the City (and, as applicable, the obligations of the Developer or its affiliate pursuant to the CDBG Agreement) with respect to the affected Development Site will survive the Closing of such Phase and be specified in the City Loan Documents or other written agreements.

ARTICLE VI
Pre-Closing Activities and Funding

6.1 Plans and Specifications**:** The Developer shall coordinate with City and the project architect, the development of plans and specifications for each Approved Phase. The plans for Rental Phase 1 are those that have been submitted to and approved by NCHFA and plans for later phases shall generally be guided by the Revitalization Plan and approved by NCHFA.

6.2 Permits and Approvals: Developer shall obtain all building and construction permits, licenses, easements and approvals necessary for each Approved Phase.

6.3 Appraisal, Market Study, Financing Commitments**:** The Developer shall obtain an appraisal, market study, if necessary, and applicable title commitments respecting each Approved Phase and shall timely apply for and make best efforts to obtain, an allocation of Federal low-income housing tax credits, and other financial

commitments as necessary to support construction of the Approved Phase.

6.4 General Contractor: For each Approved Phase, Developer intends to select a General Contractor not affiliated with the Developer pursuant a City-approved pre-qualification process and a Request for Proposals, which will include the establishment of SDBE goals and a workforce development plan. Thereafter, and upon finalization of the Plans, Developer shall negotiate a fixed price or guaranteed maximum price contract or another pricing mechanism acceptable to the City ("Construction Contract") with the selected General Contractor, and such construction contract also shall meet the other requirements of this Agreement and of the City Loan Documents. The Construction Contract shall provide for assignment to the City of all plans, studies, reports, drawings, permits, approvals and other work product produced or obtained by the Developer in connection with the Development and all of Developer's interests in agreements relating to such work product, and shall incorporate the relevant terms of this Agreement. The Developer shall submit a copy of the Construction Contract to the City. The Construction Contract shall provide for assignment to the City in the event of default under the City Loan Documents.

ARTICLE VII
Closings

7.1 Continuing Relationship The City and the Developer acknowledge that the Revitalization Plan contemplates certain long-term continuing relationships between the City and the Developer or affiliates of the Developer following Closing and following completion of each Approved Phase that are integral to the realization of the goals of the Revitalization Plan. The terms and conditions of such continuing relationships with respect to each Approved Phase are to be more fully described and set forth in various documents which will be executed in connection with the respective Closings. The present understandings between the City and the Developer with respect to such relationships as they relate to the Rental Phases, as will be memorialized and further detailed in separate agreements at the Closings of each Rental Phase, are summarized in the following provisions of this Article 7.

7.2 Ownership of Rental Phases: The Developer will form a single-purpose North Carolina limited partnership or limited liability company to own each Rental Phase (each, an "Owner Partnership"). The Developer or its affiliate will be the sole or principal general partner (or managing member) of each Owner Partnership and, after Closing, the sole or principal limited partner (or non-managing member) will be the Investor. The Developer may maintain an ownership interest for itself, its general partner or an affiliate in an Owner Partnership -- together with a corresponding share of low-income housing tax credits -- which shall be limited to a five percent (5.0%) partnership (or membership) interest in the Owner Partnership. With respect to each Rental Phase, the City will convey fee title to the Development Site to the Owner Partnership.

7.3 Developer Fees: As full compensation for its undertaking and performance of the Developer Services, the Developer and/or its Affiliates shall be entitled to earn and receive developer fees with respect to each Phase of the Revitalization Plan. These developer fees shall be paid solely from syndication proceeds or other development financing sources. The City acknowledges such developer fee with respect to Rental Phase 1 is limited by the NCHFA to $1,000,000, and authorizes payment of such amount provided that the City bears no responsibility for such payment and the fee will not be paid from proceeds of the City Loans

7.4 Property Management: With respect to each Rental Phase, the initial property management agent engaged by the Owner Partnership will be McCormack Baron Ragan Management Services, Inc., an affiliate of the Developer ("Management Agent"). The Management Agent shall be responsible to the Owner Partnership for management of each Phase in accordance with the terms of the Management Agreement, and other applicable requirements referenced therein. Any change in the Management Agent proposed by the Developer must be approved in writing by the City. A copy of the Management Agreement shall be submitted to the City for its approval prior to the Closing of Rental Phase 1. The City approves a management fee of six percent (6%) of gross collected rents.

7.5 City Loans; City Loan Documents:

(a) Upon the due performance by Developer of all its prior obligations with respect to an Approved Phase, as set forth herein, Developer and/or the Owner Partnership, as appropriate, and the City will execute at Closing for such Phase such documents as shall be necessary and appropriate to make the City Loans and otherwise implement the Revitalization Plan relative to such Phase, which shall collectively be known as "City Loan Documents" for such Phase. City Loan Documents expressly refers to the promissory notes, deeds of trust and all other documents, approvals, waivers, opinions, policies, surveys and agreements required by the City as a term of agreeing to make a City Loan.

(b) Subject to the terms and conditions provided in this Agreement and all applicable laws and regulations, the City will make loans to the Rental Phase I Owner Partnership: a "Cash Flow Loan" of approximately $4,686,468.00 and a "Deferred Payment Loan" of approximately $800,000.00. Each City Loan will be made at zero percent (0%) interest, with a term of 45 years and on terms required by NCHFA. Beginning with the first year after achievement of stabilization (which will be defined more particularly in the Rental Phase I Owner Partnership's limited partnership agreement to reflect approximately 3 months of breakeven operations at a specified debt service coverage ratio), payments in the amount of 60% of Net Cash Flow shall be made to the City in repayment of the Cash Flow Loan. The City Loans may be documented through multiple promissory notes – e.g., three notes corresponding to three sources of funds. Beginning with the thirty-first (31st) year after achievement of

stabilization, payments will also begin on the Deferred Payment Loan, at which point 60% of Net Cash Flow will be paid toward each of the two loan balances in equal amounts based upon the respective balances of each loan at that point in time. The outstanding balance of principal, and interest and fees, if any, shall be due at the end of the term. "Net Cash Flow" will be defined as follows: surplus cash (as established under HUD reporting requirements for multifamily projects subject to HUD's Uniform Financial Reporting Standards for HUD Housing Programs, except that references in such requirements to HUD-insured loans and to HUD approvals shall be disregarded) remaining after payments of debt service, fees, tax credit adjuster payments, partner loans, reserve replenishment and other conditions as may be required by the Investor and by third-party lenders subject to reasonable approval by the City. If NCHFA or other lenders require repayment from Net Cash Flow or otherwise from cash flow of the Owner Partnership, then such lenders' payments will be included within and credited against the 60% share described above and the City will therefore be required to divide such amounts with such other lenders, and payments will be made among all lenders (including the City) *pari passu* or as may otherwise be negotiated between the City and such other lenders. Should a financing "gap" not projected at the date of this Agreement or the date on which a Development Budget or Phase Budget is established be created by changed debt or equity market conditions, or by material increases in construction costs in the market area which Developer had no reasonable means of anticipating, the City and Developer agree that for Rental Phase 1, the parties will share equally in the financial responsibility to close said gap up to an amount not to exceed $675,000. (The City's portion of such responsibility may be satisfied through an increase to the amount of the City Loans.)

(c) The City Loan Documents shall more generally conform to the requirements normally imposed by public entities in undertaking participation in projects similar to the Development and shall be in form and content satisfactory to Developer, the City, the Developer's counsel, the City's counsel, the Investor, the Investor's counsel, other lenders' counsel, bond counsel, the purchasers and the underwriters of any bonds, and/or any other interested parties.

(d) Once Closing has occurred for any Phase, City Loan Documents will govern the rights and remedies of the parties in regard to the subject Phase. This Agreement shall terminate and be of no further relevance to such Phase, nor shall it bind any Owner Partnership. This Agreement shall remain applicable to elements of the Revitalization Plan other than the Phase that has achieved Closing.

ARTICLE VIII
Termination

8.1 Events of Default: The occurrence of any of the following events and the failure of the Developer to cure or correct such event to the City's satisfaction within the applicable notice or grace periods, if any, shall from and after the

expiration of the relevant notice or grace period, if any, constitute an Event of Default under the terms of this Agreement (subject, in any event, to Events Beyond Control in Section 8.2):

(a) the invalidity or material inaccuracy of any warranty, representation or opinion in this Agreement;

(b) the material breach by the Developer of any covenant or agreement contained in this Agreement;

(c) any representation or warranty submitted to the City concerning the financial conditions or credit standing of the Developer proves to be materially false or misleading, or if the Developer shall fail to furnish any financial information reasonably requested by the City, or, in the City's opinion, there shall occur a material adverse change in the financial condition or credit standing of the Developer;

(d) the Developer shall (a) apply for or consent to the appointment of a receiver, trustee or liquidator of the Developer, (b) file a voluntary petition in bankruptcy or admit in writing the Developer's inability to pay its or his debts as they become due, (c) make a general assignment for the benefit of creditors (d) file a petition or answer seeking reorganization or rearrangement with creditors who are taking advantage of any insolvency law, (e) file an answer admitting the material allegations of a petition filed against the Developer or such similar proceeding, or (f) be the subject of order, judgment or decree entered by any court of competent jurisdiction, or by any other duly authorized authority, on application of a creditor or otherwise, adjudicating the Developer as bankrupt or involvement or approving a petition seeking reorganization of the Developer, if such order, judgment or decree shall continue unstated and in effect for any period of sixty (60) consecutive days. No additional notice shall be applicable to matters under this Section 8.1(d); or

(e) the Developer is subject to debarment, suspension, or other exclusion from participation in any Federal or State program which shall exclude the Developer from qualifying for award of Federal or State assistance (including allocation of low-income housing tax credits) on which the Development is dependent.

8.2 Events Beyond Control: Notwithstanding Section 8.1, it shall not be an Event of Default if the cause of the purported Event of Default arises from the failure to occur of one or more Development Contingencies (as defined in Section 8.3) or from unforeseeable causes beyond the reasonable control of the Developer. Examples of such causes include (a) acts of God or public enemy, (b) acts or failure to act, or delays in action, of HUD, the City, other funding bodies or other governmental entities in either their sovereign or contractual capacity, (c) acts or

failure to act of another contractor (other than a contractor to the Developer) in the performance of a contract with the City, (d) fires, (e) floods, (f) strikes or labor disputes, (g) freight embargoes, (h) unavailability of materials, (i) unusually severe weather, (j) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without fault or negligence of the Developer , or (k) delay caused by litigation that is not between the City and the Developer.

8.3 Withdrawal for Infeasibility: Developer may withdraw from this Agreement if the following “Development Contingencies” fail to occur:

(a) performance of all Site Preparation Work relative to the Development Site of any Approved Phase in accordance with the Master Schedule;

(b) completion of all Public Improvements relative to the Development Site of any Approved Phase in accordance with the Master Schedule

(c) the availability of City Funds for Approved Phases in the amounts reflected in the Master Budget or a Phase Development Budget and on terms consistent with this Agreement;

(d) designation of a Rental Phase 2 as an Approved Phase on or before December 1, 2013;

(e) the provision of additional assistance from public or private sources, other than City Funds, that may become necessary to close a financing "gap" for an Approved Phase (exclusive of Rental Phase 1) relative to the Phase Development Budget;

(f) the award of tax credits in the amount projected as necessary for any Approved Phase (exclusive of Rental Phase 1) in the Phase Development Budget;

(g) the investment of equity at rates projected as necessary for any Approved Phase in the Phase Development Budget, and consistent with industry standards and norms for affordable housing; and

(h) the making of private loans under terms and conditions, and in amounts, projected to be necessary for any Approved Phase in the Phase Development Budget, and consistent with standards and norms for construction and permanent financing for affordable housing at the time of preparation of such budgets (e.g., non-recourse loans, reasonable debt service coverage and reserve requirements, and interest rates consistent with market terms at such time).

8.4 Effect of Withdrawal:

(a) If Developer’s withdrawal is related to the occurrence of one or more of the

contingencies specified in Section 8.3(c)or (d), then the City will compensate the Developer using the termination for convenience methodology described in Section 8.5, provided that in any such event fair compensation to Developer as described in clause (v) of Section 8.5 shall be limited to overhead costs incurred by Developer after July 1, 2011, taking into account any predevelopment payment or advance of overhead costs previously made to the Developer by the City.

(b) If Developer's withdrawal is related to the occurrence of one or more of the contingencies specified in Section 8.3(a) or (b), and such occurrence is not caused by a unilateral event of default by the Developer or its Affiliate under the terms of the CDBG Contract, then the City will compensate the Developer by funding 100% of third party predevelopment costs associated with an Approved Phase, including without limitation architectural design, engineering fees, environmental assessments, NCHFA allocation fee, site plan design, survey and legal fees. These fees and costs will be calculated from July 1, 2011 until the time the Developer notifies the City, in writing, of its withdrawal, and shall take into account any predevelopment payment or advance previously made to the Developer by the City.

(c) If Developer's withdrawal is related to the occurrence of one or more of the contingencies specified in Section 8.3(e) – (h), then the City will compensate the Developer by funding two-thirds of third party predevelopment costs associated with an Approved Phase, including architectural design, engineering fees, environmental assessments, NCHFA application and allocation fee, market study, site plan design, survey and legal fees. These fees and costs will be calculated from July 1, 2011 until the time the Developer notifies the City, in writing, of its withdrawal, and shall take into account any predevelopment payment or advance previously made to the Developer by the City. In the no event, however, will the City's compensation obligation under this Section 8.4(c) exceed $150,000 relative to third party costs for Rental Phase 2 incurred prior to the time, if any, that Rental Phase 2 becomes an Approved Phase.

In the event of withdrawal pursuant to this subsection 8.4., work product funded with a Predevelopment Loan shall be delivered to the City and the corresponding loans shall be deemed satisfied upon such delivery (as may be addressed in further detail pursuant to the predevelopment loan documents), and as a condition of receiving (and concurrently with receipt of) compensation under this subsection 8.4 Developer will in any event assign and deliver work product to the City in accordance with the terms of Section 8.7.

8.5 Termination by City for Convenience. The City reserves the right to terminate this Agreement at any time for the convenience of the City if the City shall determine in good faith that it is infeasible or contrary to its interests to proceed with the Development. In the event of a termination for convenience under this subsection, the City shall be liable to the Developer for reasonable and proper costs resulting from such termination which costs shall be paid to Developer within 30 days of receipt by the City

of a properly presented claim setting out in detail: (i) the total of all third-party costs incurred to date of termination from July 1, 2011; (ii) the cost (including reasonable profit, not to exceed 6%) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of Developer incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until the City or its assignee takes possession thereof or assumes responsibility therefore; (iv) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the City; and (v) fair compensation to Developer for all tasks performed to date, including reasonable profit not to exceed 6%, but with a setoff for sums previously paid by the City, or otherwise reimbursed.

8.6 Notice. The City shall exercise its election to terminate this Agreement by delivering a notice thereof to the Developer specifying the nature (default or convenience) and the effective date of the termination and the extent to which performance of work under this Agreement is terminated. If the termination is stated to be for an Event of Default, the notice thereof shall specify the nature of the claimed Event of Default and, if such Event of Default shall be reasonably subject to adequate cure, shall state (i) the actions required to be taken by the Developer to cure the Event of Default, and (ii) the reasonable time within which Developer shall respond with a showing that all required actions have been taken, provided that the Developer shall have such additional time as is reasonably necessary to cure such default so long as the Developer has diligently commenced and is proceeding in a reasonable and diligent matter toward curing such default. During any cure period so provided, the Developer shall proceed diligently with performance of any work required by this Agreement which is not the subject of the claimed default. Following expiration of the stated cure period, the City may deliver a second notice stating either that the Event of Default has been adequately cured or that the Agreement is terminated.

8.7 Action Upon Notice; Work Product. If the termination is stated to be for convenience or for a default which is not reasonably subject to adequate cure, the Developer upon receipt of such notice shall (i) immediately discontinue all services affected (unless the notice directs otherwise), (ii) deliver to the City all information, reports, papers, and other materials accumulated or generated in performing under this Agreement, whether completed or in process, and (iii) deliver to the City a status report of all work completed and all work in progress under this Agreement. Each contract or subcontract between Developer or a Developer Affiliate and any non-related third party for work related to the Revitalization (including, without limitation, any architect, engineer, or construction contractor or subcontractor) shall permit Developer or such Developer Affiliate, in the event of termination of this Agreement by the City for default or for convenience, to assign all work product thereunder to the City solely for purposes of completing, using and maintaining the Development and to terminate such contract without compensation except for work performed and unpaid; provided, however, that the Developer shall be under no obligation to deliver any work products in its

possession unless the City shall have reimbursed it for the cost thereof or shall have agreed to offset the cost thereof against any indebtedness owing from the Developer to the City. The City's rights pursuant to this Section 8.7 are expressly acknowledged not to survive Closing, provided that similar pledges and rights may be included within the City's loan documents (subject to coordination and approval with the rights of other lenders).

8.8 Remedies Cumulative: All remedies of the City provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided or available at law or in equity. The exercise of any right or remedy by the City hereunder shall not in any way constitute a cure or waiver of default hereunder or under the Note, the Deed of Trust or any applicable Loan Document, or invalidate any act done pursuant to any notice of default, or prejudice the City in the exercise of any of its rights hereunder or under the Note, the Deed of Trust or any applicable Loan Document. No delay or omission to exercise any right or power accruing upon any default shall impair any such right of power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

8.9 City Liability: In the event of a termination of this Agreement by the City which is determined to constitute a breach hereof by the City, the City shall be liable to the Developer in accordance with applicable law for all actual damages caused thereby.

ARTICLE IX
Developer's Warranties

Developer hereby warrants and represents to City as follows:

9.1 Status and Authority: (i) The Developer is a for profit corporation duly organized, existing and in good standing under the laws of Missouri, (ii) its articles of incorporation and any certificates of partnership or of assumed or business name have been delivered to the City and are in full force and effect and have not been amended or changed, (iii) no proceeding is pending, planned or threatened for the dissolution, termination or annulment of it, (iv) all articles of incorporation and of assumed or business name required to be filed have been duly filed and it has complied with all other conditions prerequisite to its doing business in North Carolina, (v) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in transactions contemplated by this Agreement, and (vi) all necessary corporate actions of it have been duly taken.

9.2 Indemnification: (a) To the maximum extent allowed by law, the Developer shall defend, indemnify, and save harmless Indemnitees from and against all

Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Developer or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection “a,” the Developer shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections “a” above and “c” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Developer (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall not survive Closing of a Rental Phase) or termination of the services of the Contractor under this contract (but similar provisions may be included within loan documents relating to each Rental Phase). (e) Limitations of the Developer's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Developer to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

ARTICLE X
General Conditions

The following terms and covenants shall be applicable throughout the term of this Agreement, and shall survive Closing:

10.1 No Waiver: No waiver of any Event of Default or breach by the Developer hereunder shall be implied from any delay or omission by the City to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver, and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein must be in writing and shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the City to or of any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or

approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of the City hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.

10.2 No Third Party Beneficiaries: This Agreement is made and entered into for the sole protection and benefit of the City, the Developer and their successors and assigns, and no other person or persons shall have any right to action hereon or rights to any City Funds at any time, nor shall the City owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the New Improvements, or to exercise any right or power of the City hereunder or arising from any default by the Developer.

10.3 Joint and Several Liability: All persons, firms and/or entities identified by the designation “Developer” herein shall be jointly and severally liable to the City for the faithful performance of the terms hereof. The City acknowledges, however, that no such other persons, firms and/or entities have been designated in this manner other than McCormack Baron Salazar, Inc.

10.4 Heirs, Successors, Assigns, Assignment: The terms hereof shall be binding upon and insure to the benefit of the heirs, successors, assigns and personal representatives of the parties hereto; provided, however, that the Developer shall not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any moneys to be advanced hereunder in whole or in part without the prior written consent of the City and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.

10.5 Definitions: Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine. References to a "Section" or "Article" shall mean a section or article of this Agreement unless otherwise expressly stated.

10.6 Governing Law: This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State and any litigation relating to this Agreement shall be brought in a court in the State, with venue in Durham County.

10.7 Severability: Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions thereof, which shall remain in full force and effect.

10.8 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall

constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

10.9 Captions: The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof.

10.10 Notices: When any notice or consent is required or permitted to be given under the terms of this Agreement or under applicable law, such notice or consent shall be in writing and shall be effective only upon the earlier of (i) actual receipt by the party to whom notice is given or (ii) 48 hours after deposit in registered or certified United States Mail. Such notice shall be given by personal delivery or sent by certified mail, return receipt requested, and addressed as follows:

To Developer:
McCormack Baron Salazar Inc.
1415 Olive Street, Suite 310
St. Louis, MO 63103-2334
Attention: Kevin McCormack

To City:
Dept. of Community Development
101 City Hall Plaza
Durham, NC 27701
Attn: Director
Phone: 919-560-4570
Fax: 919-560-4090

or to such other persons or addresses as the parties may, from time to time, establish in writing.

10.10 No Discrimination: The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors and Developers to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts and loans.

10.11 Exercise of Functions: Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Agreement shall in any way estop, limit or impair the City from exercising or performing any regulatory, policing, legislative governmental or other powers and functions with respect to the Property pursuant to applicable law.

10.12 No Partnership: Nothing in this Agreement is intended or shall be considered to create a joint venture or partnership between the City and the Developer or constitute either the agent of the other or to make the City in any way responsible for the duties, responsibilities, obligations, liabilities, debts or losses of the Developer.

10.13 Limited Capacity of City under this Agreement: The Developer understands and acknowledges that with respect to the City's Mortgage Loan

Programs, under which the City Loans are being offered by the City, the City is acting in a limited capacity only as a mortgage lender and is not otherwise responsible in any way with respect for the construction, operation or maintenance of the Development. The Developer further understands and acknowledges that the Developer is responsible for contracting with any other person with respect to the construction, operation or maintenance of the Development, that the Developer will be responsible for determining that the New Improvements have been constructed or will be constructed, and thereafter operated and maintained, in accordance with all applicable requirements of law and that the Developer will responsible for its obligations to any other person with respect to the construction of the New Improvements.

10.14 Whole Agreement: This Agreement, including the exhibits attached hereto, shall be the whole agreement between the City and the Developer with respect to the matters herein.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on its behalf and attested as of the date first written above.

City of Durham

By:_____
Thomas J. Bonfield, City Manager

ATTEST:

_____
City Clerk

McCormack Baron Salazar, Inc.

By:_____
Kevin McCormack, President

ATTEST:

_____
Corporate Secretary

(Affix corporate seal here)

NORTH CAROLINA
COUNTY OF DURHAM

I, A Notary Public in and for the aforesaid county and state certify that _____ personally appeared before me this day, and acknowledged that she is the City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by its said City Clerk. This the _____ day of _____, 2012.

My Commission expires:

_____
Notary Public

_____

STATE OF _____
COUNTY OF _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is Assistant Secretary of McCormack Baron Salazar, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing agreement with the City of Durham was signed in its name by its President, whose name is Kevin McCormack, sealed with its corporate seal, and attested by him/herself as its said Asst. Secretary. This the ____ day of_____, 2012.

My Commission Expires: _____

_____ Notary Public

PRE-AUDIT STATEMENT
This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____ _____
City of Durham Finance Officer Date

Exhibit A – Revitalization Site Map
[*see following page*]

EXHIBIT B
SOUTHSIDE EAST MASTER DEVELOPMENT SCHEDULE

Item	Description	Southside East Phase 1	Southside East Phase 2
Site			
	City/HUD Environmental Review	complete	complete
	Environmental Review Completed	complete	complete
	Environmental Phase I	complete	complete
	Environmental Phase II	complete	complete
	Environmental Remediation	Sep-12	Dec-12
	Site Acquisition	Sep-12	Mar-14
Local Permits			
	Site Plan Review/approval	see below	see below
	Rezoning	complete	Dec-12
	Administrative Variations	Mar-12	Sep-13
	Site Plan Review	Mar-12	Sep-13
	Site Plan Review (Subdivision Plat)	Mar-12	Sep-13
	Conditional Use Permit	n/a	?
	Variance	n/a	?
	Land Disturbance Permit	see Grading	see Grading
	Design/Devp Review	complete	Sep-13
	Grading Permit	complete	complete
	Building Permit	Jun-12	Jan-14
Construction Financing			
	Loan Application	Apr-12	Nov-13
	Enforceable Commitment	Jun-12	Jan-14
	Closing and Disbursement	Sep-12	Mar-14
Permanent Financing			
	Loan Application	Apr-12	Nov-13
	Enforceable Commitment	Jun-12	Jan-14
Other Loans			
	Type & Source:	City of Durham	City of Durham
	Application	complete	complete
	Award	complete	May-13
	Closing and Disbursement	Sep-12	Mar-14

	Type & Source:	NCHFA STC	NCHFA STC
	Application	complete	May-13
	Award	complete	Aug-13
	Closing and Disbursement	Sep-12	Mar-14
	Type & Source:		NCHFA RPP
	Application		May-13
	Award		Aug-13
	Closing and Disbursement		Mar-14
Tax Credit / Bond Issues			
	NCHFA Application	complete	May-13
	NCHFA Award	complete	Aug-13
	NCHFA 10% of Costs Incurred	Mar-12	Mar-14
Construction			
	Construction Schedule of Values	Apr-12	Dec-13
	Construction Start	Sep-12	Mar-14
	Construction Complete	Nov-13	May-15
	Placed in Service	Dec-13	Jun-15
	Occupancy of All Low-Income Units	Oct-14	Dec-15
Capital Event			
	Construction Loan Closing	Sep-12	Mar-14
	Construction Completion	Dec-13	May-15
	Stabilization	Dec-14	Mar-16

Exhibit C – Development Budget

Southside East Revitalization Budget Phase 1		
	NCHFA Revised Cost	**MBS Actual Budget**
Purchase		
Demolition		
On Site Improvements	2,558,425	2,558,425
Rehab		
New Buildings Construction	9,562,362	9,562,362
Accessory Buildings		
General Requirements	726,731	726,731
Overhead	256,778	256,778
Profit	1,027,800	1,027,800
Contingency	706,500	706,500
Architectural Design	348,998	348,998
Architectural Administration	95,700	95,700
Engineering	386,039	386,039
SUBTOTAL	**15,669,333**	**15,669,333**
Construction Insurance	139,700	139,700
Construction Loan Orig. Fee	83,200	83,200
Construction Loan Interest	162,497	162,497
Construction Paid Taxes	73,529	73,529
Water, Sewer Impact Fees	169,249	169,349
Survey	13,803	13,803
Appraisal		
Environmental Report	40,000	40,000
Market Study	4,300	11,000
Bond Costs		
Bond Issuance Costs		
Placement Fee		
Permanent Loan Orig. Fee	83,033	83,033
Perm Loan Credit Enhancement		
Title and Recording	20,000	20,000
SUBTOTAL	**789,311**	**796,111**
Real Estate Attorney	50,000	50,000
Other Attorney's Fees	25,000	130,000
Tax Credit Application Fees	2,400	2,400

Tax Credit Allocation Fee	100,166	100,166
State Credit Closing Fee	1,500	1,500
RPP Closing Fee		
Cost Certification/Accounting	15,000	25,000
Tax Opinion	5,000	15,000
Organizational	5,000	14,100
Tax Credit Monitoring Fee	88,060	88,060
Relocation		
Developers Fee	1,000,000	1,000,000
Additional Contingency	30,000	30,000
Other Basis Exp. Live/Work/Retail	1,044,628	1,303,942
Other Basis Exp. Pay/Perf. Bond	69,777	69,777
Rent Up Expenses	126,848	322,898
Other Non Basis Expenses Marketing	0	40,000
Other Non Basis Expenses Lease Up		
Other Non Basis Expenses (Fees)	37,911	37,911
SUBTOAL	**2,389,164**	**2,293,528**
Rent Up Reserve	51,652	51,652
Operating Reserve	452,120	452,120
Other Reserve		
DEVELOPMENT COST	**19,643,707**	**20,318,971**
GAP		-675,264